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FISCAL IMPACT STATEMENT

LS 6484

BILL NUMBER: HB 1355

NOTE PREPARED: Jan 24, 2013

BILL AMENDED:

SUBJECT: Ephedrine and Pseudoephedrine.

FIRST AUTHOR: Rep. Kubacki

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill makes materials, compounds, mixtures, or preparations that contain ephedrine or pseudoephedrine Schedule III controlled substances subject to being dispensed only by a prescription.

Effective Date: July 1, 2013.

Summary of NET State Impact: The fiscal impact of this bill has four components.

- (1) The bill will result in about \$24,250 annually in additional Medicaid cost.
- (2) The Indiana State Police estimate an undetermined level of cost avoidance due to the decline in the need to detect and clean up clandestine laboratory sites.
- (3) Sales tax revenues would decrease by an indeterminate amount as a result of changing the status of products containing ephedrine and pseudoephedrine from over-the-counter to Schedule III (prescription drug) status.
- (4) Costs for the incarceration of offenders convicted of dealing in a Schedule III controlled substance offense could increase.

Explanation of State Expenditures: *Medicaid Expenditures:* If pseudoephedrine products were changed from over-the-counter (OTC) status to a prescription Schedule III drug, a dispensing fee of up to \$4.90 would be paid to the pharmacy provider. The Office of Medicaid Policy and Planning (OMPP) estimates 15,000 annual claims for pseudoephedrine products would result in additional annual Medicaid dispensing fees of \$73,500. The state matching share of the additional cost would be about \$24,250.

Medicaid is jointly funded by the state and federal governments. The effective state share of program expenditures is approximately 33%. Medicaid medical services are matched by the effective federal match rate (FMAP) in Indiana at approximately 67%. Administrative expenditures with certain exceptions are matched at the federal rate of 50%.

[Currently, Medicaid requires prescriptions for OTC medications for Medicaid members. Only those OTC medications included on the Medicaid formulary are considered to be covered drugs. The formulary includes pseudoephedrine products. Medicaid does not pay a dispensing fee to pharmacies for OTC claims.]

Indiana State Police (ISP): The ISP has reported that no additional costs would be expected to be incurred as a result of placing ephedrine and pseudoephedrine on the Schedule III list. The ISP anticipates the impact of requiring a prescription for these compounds would be a decrease in the level of resources currently used to dismantle clandestine labs and the associated environmental cleanup. During CY 2011, the ISP reported 1,437 methamphetamine (meth) labs. The ISP estimates that the average cost of cleanup per meth lab is about \$2,280, including supplies, equipment, labs analysis of evidence, and personnel expense. The average cost does not include costs to social service organizations, remediation, incarceration, or medical expenses incurred.

Criminal Offenses: Costs for the incarceration of offenders convicted of dealing in a Schedule III controlled substance offense could increase if more people are incarcerated as a result of adding to the list of Schedule III controlled substances. Also, costs of incarceration could increase because racketeering influence and corrupt organization statutes apply to dealing controlled substance offenses and, depending on the circumstances of a controlled substance offense, portions of a sentence may not be suspended. Felony murder charges apply when a person kills another person while dealing a Schedule III controlled substance.

Although not expected to have a fiscal impact on state agencies, adding to the controlled substance schedule may increase the number of driver's license suspensions and professional license revocations (depending on the actions of the court and the professional licensing boards or state agencies involved).

The average expenditure to house an adult offender was \$18,582 in FY 2012. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,234 annually, or \$8.86 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$78,318 in FY 2012.

Indiana Professional Licensing Agency (IPLA) and Board of Pharmacy Expenditures: The IPLA and the Board of Pharmacy estimate that placing ephedrine and pseudoephedrine on the Schedule III list would require no additional funds for implementation or surveillance.

Excess Handgun License Fees: Handgun fees are placed in the state General Fund and any revenue in excess of \$1.1 M is transferred to the Excess Handgun License Fee Fund for use by the ISP to (1) operate and maintain a central repository for criminal history data, and (2) to establish, operate, or maintain an electronic log to record the sale of drugs containing ephedrine or pseudoephedrine. Currently, the Fund is not used for this second purpose, but if drugs containing ephedrine or pseudoephedrine require a prescription, the log provisions under IC 35-48-4-14.7 would not apply.

Ephedrine/Pseudoephedrine Background Information: Ephedrine and pseudoephedrine are known as precursor drugs necessary to the production of methamphetamine. Indiana currently requires the sale of cold and allergy products containing these drugs to be limited and tracked by purchaser with the products maintained behind

the counter or in full view of a pharmacist. Clandestine meth labs are considered a public safety menace; being explosive, toxic, and environmentally pervasive. The costs of dealing with meth lab investigation, dismantling, and cleanup affect the budgets of numerous state agencies.

The ISP directly seizes about 96% of the total number of labs located and dismantled in the state. ISP data indicates that in 2008, it seized 1,059 labs; in 2011 there were 1,363 seizures, an increase of about 29%. The number of clandestine labs has increased about 96%, from 732 reported in 2002 to 1,437 reported in 2011. Each location is counted as a lab, although multiple batches may be in progress. In 2011, 74% of labs seized were one-pot or small batch labs.

Two states, Oregon and Mississippi have enacted legislation requiring a prescription for products containing ephedrine or pseudoephedrine. Oregon's data demonstrates declines in clandestine labs for three phases of limitations on purchases of ephedrine and pseudoephedrine. The first decline was associated with a statute that moved the products behind the counter, the second phase required photo identification and logging of purchases which appeared to be responsible for further declines in meth labs. The third phase, effective since 2006, designated ephedrine and pseudoephedrine as prescription drugs. In 2004, Oregon reported 448 clandestine labs in the state. Since the prescription requirement went into effect, the number of meth labs in Oregon were reported to be 20 in 2007, 21 in 2008, 13 in 2009, 13 in 2010, and 10 in 2011. This represents a decrease of almost 98%. In addition the majority of the reported meth lab incidents from 2007 through 2011 were dump sites, partial, or remnants - not operational meth lab incidents.

Explanation of State Revenues: *State Sales Tax Revenue:* Sales tax revenues would decrease as a result of changing the status of products containing ephedrine and pseudoephedrine from OTC to Schedule III. Prescription drug purchases are exempt from sales tax while OTC products are taxed. The amount of tax revenue lost as a result of the change in status is indeterminate but would depend on the number of ephedrine/pseudoephedrine sales that would actually be transferred to prescription sales and the level of OTC product substitution that occurs as a result of the lack of availability of ephedrine/pseudoephedrine.

Excise Tax Revenue: Revenues may increase because illegal controlled substances are subject to a \$40-per-gram, or other unit, excise tax. However, the expected increase in excise tax revenue is minimal - the revenues in FY 2012 were about \$175 from all schedule controlled substances excise taxes. Criminal offense penalties may include fines, and vehicles or other property involved in controlled substance offenses may be forfeited.

(See *Explanation of State Expenditures* regarding federal reimbursement in the Medicaid Program.)

Criminal Offenses: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for all felony offenses is \$10,000. Criminal fines are deposited in the Common School Fund.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive

3% of the criminal costs fee. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

State Agencies Affected: IPLA, Board of Pharmacy; FSSA, Office of Medicaid Policy and Planning; Indiana State Police; Department of Corrections.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: FSSA, ISP, IPLA, Board of Pharmacy, *Crime in Oregon Report*, June 2010, Criminal Justice Commission, State of Oregon at: http://www.oregon.gov/CJC/docs/Crime_Report_2010.pdf?ga=t; 2010 and 2011 Oregon statistics at <http://www.oregondec.org/OregonMethLabStats.pdf>; and DEA State Fact Sheets at http://www.justice.gov/dea/pubs/state_factsheets/oregon.html, Statement of Senator Ron Wyden of Oregon to the Senate Caucus on International Narcotics Control Hearing, April 13, 2010, at <http://drugcaucus.senate.gov/wyden-pseudoephedrine-hearing-4-13-10.html>; DOC; ISP; Doug Gosser, Indiana Sheriffs' Association, 317-356-3633; www.in.gov/meth/.

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